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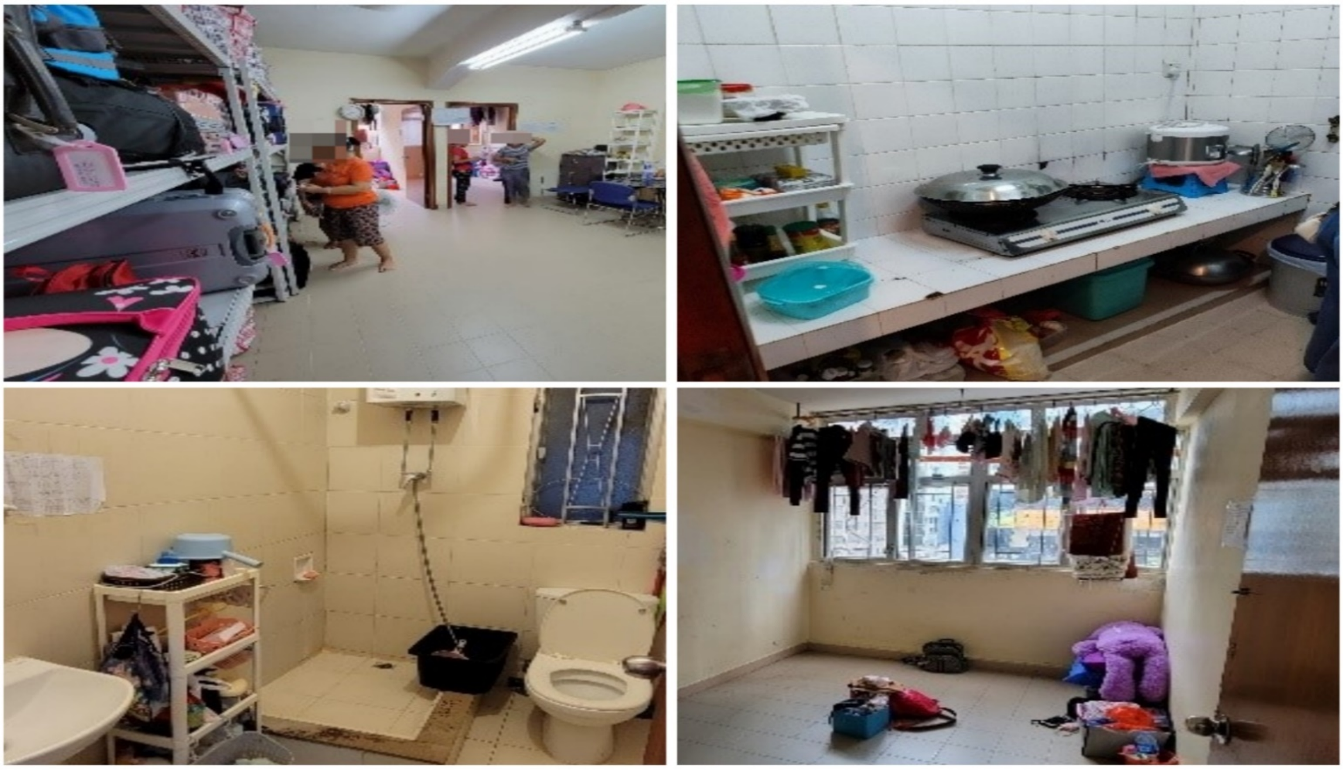

主動調查報告
Direct Investigation Report

政府對外傭宿舍的規管
Government’s Regulation of Boarding Facilities for Foreign Domestic Helpers

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Executive Summary
Direct Investigation Report

Government's Regulation of Boarding Facilities for Foreign Domestic Helpers

Introduction

Since the 1970's, the Government has allowed the importation of foreign domestic helpers ("FDHs") into Hong Kong. As of September 2020, around 370,000 FDHs were employed in Hong Kong. Amid the COVID-19 pandemic, there was extensive media coverage on local infection cases of FDHs, revealing an array of problems about boarding facilities for FDHs, such as over-crowdedness, poor hygiene and suspected violations of permitted building use.

2. Given the Government's policy to import FDHs and the large number of persons involved, it has a duty to ensure reasonable protection of their well-being, including their temporary boarding facilities. In this connection, we launched a direct investigation to examine the responsibilities of relevant departments, including the Labour Department ("LD"), the Home Affairs Department ("HAD") and the Immigration Department ("ImmD"), on the regulation of FDH boarding facilities as well as their collaboration, with a view to recommending improvement measures where necessary. The focus of our investigation is on FDH boarding facilities operated by employment agencies ("EAs"). The public views we received during the investigation showed general support for the Government's stepping up of the regulation of FDH boarding facilities. After examining the work of LD, HAD and ImmD, we have the following comments and recommendations.

Our Comments

(I) Improving the Standards of FDH Boarding Facilities Operated by EAs

<u>Justifications</u>

3. During their stay in Hong Kong, the several hundred thousand of FDHs may need accommodation out of their employer's residence in various circumstances. In

particular, during the "two-week rule" period[Note] upon completion or premature termination of employment contract, some FDHs may remain in Hong Kong briefly, pending return to their place of origin or the Government's approval of visa for joining a new employer. In other words, they have a practical need to stay on such residential premises commonly known as FDH boarding facilities. The demand for FDH boarding facilities is related to the total number of FDHs imported to Hong Kong, how many of them changed employers locally, and the time taken by ImmD to process their visa applications. However, the Government has no systematic data on the demand, locations, number and facilities of those premises, nor is there any dedicated legislation for regulating FDH boarding facilities.

4. Our investigation has revealed that upon receiving complaints about FDH boarding facilities in the past, LD often referred them to HAD for handling under the Hotel and Guesthouse Accommodation Ordinance ("HAGAO") (Cap. 349) or the Bedspace Apartments Ordinance ("BAO") (Cap. 447). In our view, if the FDH boarding facilities are operated in the same mode as guesthouses or bedspace apartments, HAD is duty bound to follow up pursuant to the two ordinances. However, according to our understanding, EAs operate FDH boarding facilities in multiple modes. Notably, many boarding facilities operated by EAs are for FDHs' exclusive use and are therefore not advertised openly. Meanwhile, some of them are free of charge. Those boarding facilities thus fall outside the ambit of the HAGAO or the BAO. Referrals to HAD for follow-up action under the above legislation alone are clearly inadequate in regulating FDH boarding facilities. As a matter of fact, past cases (see Chapter 4) show that some FDH boarding facilities are not within the ambit of the HAGAO and the BAO.

5. Currently, the consulates of certain FDH-exportation countries have introduced an accreditation system for local EAs, authorising them to provide job placement services for their nationals. While the measure can help ensure the basic standards of FDH boarding facilities operated by accredited EAs, the accreditation systems of consulates are not mandatory under any local legislation. Setting requirements for FDH boarding facilities by consulates alone may not be sufficient to address the problem, not to mention that protection of the well-being of FDHs is a duty incumbent upon the Hong Kong Government.

6. We appreciate that EAs perform a social function in operating boarding facilities for FDHs in need of temporary accommodation. The quality of those

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[Note] The Government's existing policy provides that FDHs are required to leave Hong Kong upon completion of the employment contract or within two weeks from the date of its premature termination, whichever is earlier.

boarding facilities which charge minimal or no fees at all is inevitably constrained by resources. Should the Government step up the regulation of FDH boarding facilities, there may be concerns that some EAs may have to shift the rising costs to the helpers or the employers, or even cease the boarding service, thereby rendering an undesirable outcome for all three parties concerned. Our response is that FDH boarding facilities indeed perform a social function. The purpose of regulatory measures is not to stamp out those premises, but to provide the Government with a means to ensure reasonable accommodation for FDHs employed in Hong Kong and to stipulate the standards for compliance by operators. Substandard boarding facilities for FDHs are unacceptable to society from a humanitarian point of view, while tarnishing Hong Kong's reputation at the same time. Admittedly, in devising any regulatory measures, the Government has to strike a balance in light of multiple considerations, actual circumstances, opinions of various stakeholders, etc. On the issue of regulating FDH boarding facilities, the Government may candidly liaise with stakeholders to draw up a generally acceptable proposal for progressively improving/enhancing the operation standards of FDH boarding facilities.

7. Based on the above analysis, we consider it essential for the Government to adopt measures to improve the standards of FDH boarding facilities operated by EAs. We appreciate that the Government will need to study and consider a wide range of factors related to this issue (including legal implication, impact on the manpower resources of departments and on the EA sector, etc.), and consult stakeholders. Hence, we recommend that the Government first implement administrative measures in the short and medium terms, and evaluate their effectiveness. If the result is unsatisfactory, the Government should explore the feasibility of introducing a statutory regulatory regime through legislative amendments in the long run, with a view to more stringent regulation of FDH boarding facilities operated by EAs.

<u>Responsible department</u>

8. We consider the new improvement measures should be implemented by LD, the department responsible for labour policy and administration. First, from a legal perspective, according to its long title, the Employment Ordinance ("EO") is to regulate general conditions of employment and EAs. The EO stipulates how LD should regulate the operation of EAs and empowers LD to take different regulatory measures.

9. The EO also empowers LD to issue the Code of Practice for Employment Agencies ("CoP") setting out principles, procedures, guidelines and standards for the

operation, management or control of EAs. Paragraph 3.7.2 of the CoP stipulates the requirements for EAs providing boarding facilities or bedspaces for job seekers, i.e. EAs must ensure that relevant approvals or licences for operating the boarding facilities or bedspaces have been obtained from all relevant Government authorities, and the standards as prescribed by the relevant laws of Hong Kong are fully and satisfactorily met at all times. As seen from this and the preceding paragraphs, the EO and the CoP provide a basis for LD to take further measures towards improving the operation standards of the FDH boarding facilities provided by EAs, and closing the regulatory gap existing in those premises outside the ambit of the HAGAO and the BAO but are operated by EAs.

10. Moreover, EAs operate FDH boarding facilities for the incentive to promote their FDH placement service. Currently, LD only regulates the job placement service of EAs, although the placement and boarding services provided for FDHs are closely related. As both services form parts of the operation and major business of EAs engaged in FDH placement, it is reasonable and synergetic for LD to regulate them together. Besides, the purpose of improving the operation of FDH boarding facilities is to protect the safety and welfare of FDHs employed in Hong Kong, thereby achieving the ultimate policy objective of safeguarding the rights and interests of labour. Evidently, this is a labour-related issue, rather than simply about the management of premises.

11. As a matter of fact, past cases (see items 3 and 4 in Table 3) show that LD would take appropriate follow-up action where an EA was allegedly involved in illegal operation of FDH boarding facilities or violated the CoP or relevant legislation. Consequently, it is not entirely outside the purview of LD to handle the operation of FDH boarding facilities by EAs. It follows logically that LD is the appropriate authority to take further measures to enhance their operation standards.

12. In sum, from the perspectives of law, policy objective and actual operation, it is rational and reasonable for LD to adopt improvement measures to enhance the quality of FDH boarding facilities operated by EAs which fall outside the ambit of the HAGAO and the BAO for protecting the well-being of FDHs employed in Hong Kong.

<u>Short- and medium-term measures</u>

13. Given the complexity in devising and implementing a statutory regulatory regime, we are of the view that the Government may first consider making

improvements through the following administrative measures.

14. First, LD may liaise with stakeholders (including the EA sector, the labour sector, consulates, and relevant policy bureaux and departments) and request EAs to submit information about their FDH boarding facilities, thereby creating a database of FDH boarding facilities operated by EAs, covering such details as their number, locations, fees and any licences issued by HAD. The database will enable LD to obtain systematic data on the existing FDH boarding facilities operated by EAs, providing a basis for formulating improvement measures.

15. Second, LD may compile and publish a list of FDH boarding facilities operated by EAs, comprising such details as the names of EAs, addresses of boarding facilities, fees and any licences issued by HAD. While the list does not imply the Government's recognition of the standards of those boarding facilities, it can enhance information transparency and facilitate informed choices of FDHs, as well as foster improvement in the sector's operation standards by market forces. To this end, it is crucial that information on the list is comprehensive and easy to understand as far as possible.

16. Moreover, we recommend that LD issue more guidelines to the EA sector on the operation of FDH boarding facilities. According to paragraph 3.7.2 of the existing CoP, EAs providing boarding facilities for job seekers must ensure that necessary approvals or licences have been obtained from all relevant Government authorities, and comply with relevant laws of Hong Kong. LD may add new provisions in the CoP to specify the relevant laws, standards and guidelines applicable to EAs for their reference and compliance. In addition, as the pandemic revealed that some FDH boarding facilities were overcrowded with poor hygiene, LD may consider drawing up a set of guidelines for reference by the EA sector, referencing the existing guidelines of relevant departments and the requirements of consulates on the boarding facilities of EAs accredited for FDH placement. It is up to the authorities to decide, depending on actual situations, whether the guidelines should be legally binding at the initial stage of implementation. Yet, it should at least provide guidance for improving the environmental hygiene of FDH boarding facilities.

17. To take a further step, LD may introduce new licensing procedures requiring an EA to undertake, in the application for new licence or licence renewal, that if boarding facilities are provided for FDHs, it will ensure compliance with relevant legislation and requirements of Government departments, including obtaining necessary licences. LD should take appropriate enforcement action under the EA licensing regime if the EA's

boarding facilities are found in breach of other Government departments' requirements subsequently.

18. We also recommend that LD strengthen routine collaboration with stakeholder bureaux and departments for exchanging information about the operation of FDH boarding facilities, formulating regulatory measures jointly and making referrals as necessary. In our view, FDH boarding facilities operated in the same mode as "hotel or guesthouse" or "bedspace apartment" defined under the HAGAO or the BAO should continue to be regulated by HAD pursuant to the two ordinances. In this connection, HAD may consider reviewing and optimising the procedures for handling complaints about FDH boarding facilities to expedite case handling. As regards FDH boarding facilities operated by EAs that fall outside the ambit of the HAGAO or the BAO, LD can take proper action if, depending on the situations, they are in breach of the CoP and relevant legislation. Hence, LD and HAD should establish a collaboration mechanism to facilitate mutual case referrals and information sharing.

19. Meanwhile, although the operation of FDH boarding facilities falls outside the purview of ImmD, it has a role to play in the overall policy on importation of FDHs with the responsibility for processing their visa applications. ImmD, therefore, should refer cases to LD and HAD for handling and share information where necessary. Depending on the situation, the department may also review the procedures for processing visa applications from FDHs, and reallocate manpower to expedite the approval of new applications where necessary.

20. Finally, LD should step up education in urging the EA sector to actively cooperate with the Government's initiatives, and encouraging voluntary improvement of FDH boarding facilities.

<u>Long-term measures</u>

21. We consider that LD should evaluate the effectiveness of the above short- and medium-term measures after implementation for a certain period. If the result is unsatisfactory, LD should explore the feasibility of introducing a statutory regulatory regime through legislative amendments in the long run, with a view to more stringent regulation of FDH boarding facilities operated by EAs.

22. Should the need to implement a statutory regulatory regime in the long run arise, LD should stipulate the operation standards for FDH boarding facilities. During the

process, LD could take reference from existing regulatory regimes on the management of other premises, the standards and requirements stipulated by consulates for FDH boarding facilities of accredited EAs, and consult stakeholders including relevant authorities.

23. In considering whether to introduce a new regulatory regime, LD reiterated that the EO is intended to provide for the protection of the wages of employees, to regulate general conditions of employment and EAs, and for matters connected therewith. LD is not empowered by the EO to regulate boarding facilities operated by EAs. If a new regulatory regime is to be established, it remains to be clarified whether the EO is the suitable instrument. By way of illustration, if the boarding facilities operated by EAs are not an integral part of their business, the EO may not provide an adequate legal basis for regulating such facilities. Moreover, LD is concerned about possible loopholes to emerge upon implementation of the new regime. For instance, to evade the requirements under the new regime, EAs may arrange for unrelated persons or companies to operate the boarding facilities, or arrange to accommodate FDHs in the boarding facilities operated by other persons or organisations. We acknowledge the concerns of LD. Should the need to introduce a statutory regulatory regime by legislative amendments arise, it is incumbent upon the Government to study and consider the issue thoroughly, including how to amend existing legislation to confer adequate powers on the authorities to perform regulatory duties, and how to plug any loopholes that may emerge upon implementation. Where necessary, the Government should conduct more in-depth research in due course.

24. FDH boarding facilities operated in the same mode as “hotel or guesthouse” or “bedspace apartment” are already regulated under the HAGAO or the BAO. Should the need to introduce a new regulatory regime arise in the future, whether FDH boarding facilities within the ambit of the two ordinances should be excluded from the new regime is subject to the study and decision of LD jointly with HAD. Apart from these two types of FDH boarding facilities, we consider that the new regulatory regime, if needed in the future, should encompass all FDH boarding facilities operated by EAs.

(II) “Live-in Requirement” during Contract Period

25. The existing policy requires all Hong Kong employers to sign with their FDHs the Standard Employment Contract (“SEC”) prescribed by the Government. Clause 3 of the SEC provides that during the employment period, the FDH shall work and reside in the employer’s Hong Kong residence specified in the SEC. Clause 15 of the SEC

stipulates that any variation to clause 3 by the employer should be made with the prior consent of the Commissioner for Labour ("the Commissioner").

26. Our investigation reveals that some employers may request their FDHs to stay in boarding facilities operated by EAs during the contract period. A common scenario is that the employer's residence is not yet ready for accommodating the FDH upon their arrival in Hong Kong. Our findings show that some employers fail to comply with clause 3 of the SEC in the above scenario without the prior consent of the Commissioner as required under clause 15, and that it generally involves just one or a few days.

27. We consider that the "live-in requirement" under clause 3 of the SEC, aimed at protecting the welfare of FDHs in receiving free board and lodging from their employers, should be enforced stringently. We accept that some employers may be compelled to arrange temporary accommodation for FDHs via EAs, such as when their residence is not ready due to unforeseeable circumstances upon the FDHs' arrival in Hong Kong. Yet, it is a different case if employers deliberately ignore their obligation to make advance preparation for accommodating the FDHs before their arrival in Hong Kong. From the perspectives of business operation and customer service, it is understandable for EAs to provide boarding facilities for FDHs in certain situations. But if this flexibility measure is misused or even abused, it is against the original intent of the measure and improper. As to whether the "live-in requirement" should be maintained, it is a policy issue not subject to our comments.

28. We recommend that LD step up publicity and education on the employers' obligation to comply with the "live-in requirement" under clause 3 of the SEC and make advance preparation for accommodating the FDHs before their arrival in Hong Kong. We also recommend that LD remind the EA sector of the "live-in requirement" under clause 3 of the SEC if engaged in FDH boarding service. LD should take appropriate follow-up action if it discovers any employers or EAs ignoring their obligation by allowing FDHs to live out of the employer's residence during the employment period.

(III) Processing of Applications for Employment Visa

29. The time taken by ImmD to process applications from FDHs for employment visa affects the demand for FDH boarding facilities. We are pleased to note that during the pandemic, ImmD has implemented measures to expedite the approval procedures, including flexible staff deployment and more extensive use of electronic services. We recommend that ImmD continue to review and improve its measures and efficiency in

processing applications for visa to change employers submitted by FDHs locally, and expedite the approval procedures as far as resources permit, thereby minimising the potential demand for FDH boarding facilities arising from their stay in Hong Kong pending visa approval.

Recommendations

30. This Office has made the following recommendations to LD, HAD and ImmD:

LD

(1) liaise with stakeholders and request EAs to submit information about their FDH boarding facilities (if any), thereby creating a database of FDH boarding facilities operated by EAs;

(2) compile and publish a list of FDH boarding facilities operated by EAs for better information transparency and facilitating informed choices of FDHs, as well as fostering improvement in the sector's operation standards by market forces;

(3) revise the CoP with more specific details on the relevant laws, standards and guidelines applicable to EAs engaged in FDH boarding service for their reference and compliance; in addition, consider drawing up a set of guidelines for reference by the EA sector, taking into reference the existing guidelines of relevant departments and the requirements of consulates on the boarding facilities of EAs accredited for FDH placement;

(4) require an EA to undertake, in the application for new licence or licence renewal, that it will ensure compliance with relevant legislation and the requirements of Government departments if it provides boarding facilities for job seekers; and take appropriate enforcement action under the EA licensing regime if the EA's FDH boarding facilities are found in breach of other Government departments' requirements subsequently;

(5) step up education in urging the EA sector to actively cooperate with the Government's initiatives, and encouraging voluntary improvement of FDH boarding facilities;

(6) step up publicity and education on employers' obligation to comply with the "live-in requirement" under clause 3 of the SEC, remind the EA sector of the "live-in requirement" if engaged in FDH boarding service, and take appropriate follow-up action if it discovers any employers or EAs ignoring their obligation by allowing FDHs to live out of the employer's residence during the employment period;

(7) evaluate the effectiveness of the measures in paragraphs 30(1) to (6) and (10) after implementation for a certain period; if the result is unsatisfactory, explore the feasibility of introducing a statutory regulatory regime through legislative amendments in the long run, with a view to more stringent regulation of FDH boarding facilities operated by EAs;

HAD

(8) review and optimise the procedures for handling complaints about FDH boarding facilities to expedite case handling;

ImmD

(9) continue to review and improve its measures and efficiency in processing applications for visa to change employers submitted by FDHs locally, and expedite the approval procedures as far as resources permit, thereby minimising the potential demand for FDH boarding facilities arising from their stay in Hong Kong pending visa approval; and

LD, HAD and ImmD

(10) strengthen routine collaboration between LD and stakeholder bureaux and departments for exchanging information about the operation of FDH boarding facilities, formulating regulatory measures jointly, and making referrals as necessary. HAD and ImmD should provide information and assistance as necessary.

Office of The Ombudsman
February 2022

1

INTRODUCTION

BACKGROUND

1.1 Since the 1970s, the Government has allowed the importation of foreign domestic helpers ("FDHs") into Hong Kong. Data of the Government shows that as of September 2020, around 370,000 FDHs were employed in Hong Kong.

1.2 Amid the COVID-19 pandemic, there was extensive media coverage on local infection cases of FDHs, revealing an array of problems about boarding facilities for FDHs, such as over-crowdedness, poor hygiene and suspected violations of permitted use of the building. The media also reported on suspected illegal operations of FDH boarding facilities, where licensees of FDH employment agencies ("EAs") or other parties rent out premises for use as FDH boarding facilities without first obtaining relevant licences or waivers from the Government.

1.3 Since FDHs are allowed to remain in Hong Kong upon completion of the employment contract or within two weeks from the date of its premature termination (see **para. 2.4**) or in other circumstances (such as pending criminal proceedings or settlement of labour disputes), some of them have a need to stay in boarding facilities during this period. However, there is no dedicated legislation or authority for regulating FDH boarding facilities in Hong Kong. Nor have relevant Government departments established any inspection mechanism for these premises to ensure that their environmental hygiene, fire and building safety facilities, etc. are suitable for the purpose of FDH boarding facilities.

1.4 Given the Government's policy to import FDHs and the large number of persons involved, it has a duty to ensure reasonable protection of their well-being, including their temporary boarding facilities. In this connection, The Ombudsman declared on 14 January 2021 a direct investigation pursuant to section 7(1)(a)(ii) of The Ombudsman Ordinance to examine the responsibilities of relevant departments, including the Labour Department ("LD"), the Home Affairs Department ("HAD") and the Immigration Department ("ImmD"), on the regulation of FDH boarding facilities as well as their collaboration, with a view to recommending improvement measures where necessary.

SCOPE OF INVESTIGATION

1.5 FDH boarding facilities in the market are currently operated by various parties, including EAs, other individuals or organisations. The focus of this direct investigation is on FDH boarding facilities operated by EAs. FDH boarding facilities operated by other individuals or organisations, if advertised openly and provided at a fee, should fall within the licensing regimes implemented by HAD under the Hotel and Guesthouse Accommodation Ordinance ("HAGAO") (Cap. 349) and the Bedspace Apartments Ordinance ("BAO") (Cap. 477).

1.6 The scope of this direct investigation covers:

- relevant legislation and administrative measures for regulating FDH boarding facilities;
- purview of relevant departments and their collaboration and division of duties;
- handling of complaints and pandemic incidents of FDH boarding facilities by relevant departments; and
- areas for strengthening/improving the regulation of FDH boarding facilities.

PROCESS OF INVESTIGATION

1.7 In this direct investigation, this Office has:

- invited LD, HAD and ImmD to provide information;
- examined the legislation and administrative measures for regulating FDH boarding facilities;
- examined the authorities' handling of complaints and pandemic incidents of FDH boarding facilities;
- visited FDH boarding facilities provided by an EA to learn more about their operation; and
- invited views from stakeholders/members of the public, perused their submissions[1] and discussed with some respondents in detail.

1.8 The public views we received show general support for the Government's

[1] This Office received a total of 17 public submissions in response to this direct investigation.

stepping up of the regulation of FDH boarding facilities. Most respondents are concerned whether FDH boarding facilities are compliant with statutory provisions, and the lack of regulation might cause problems to crop up, including poor environmental hygiene, fire and building safety hazards. Some respondents advocate the licensing of all FDH boarding facilities, and urge relevant Government departments to step up inspection. Meanwhile, there are concerns that EAs might face rising costs of operating FDH boarding facilities, or even shift the costs to FDH employers.

1.9 On 2 December 2021, we issued a draft investigation report to LD, HAD and ImmD for comments. This final report, upon considering and duly incorporating comments from the three departments, was completed on 15 February 2022.

2

POLICY AND BACKGROUND

POLICY ON IMPORTATION OF FDHS AND LIVE-IN REQUIREMENT

2.1 Under the existing policy, all Hong Kong employers are required to sign with their FDHs the Standard Employment Contract ("SEC")[2] prescribed by the Government. Clause 3 of the SEC provides that during the employment period, the FDH shall work and reside in the employer's Hong Kong residence specified in the SEC ("live-in requirement")[3]. Furthermore, the employer and the FDH are required to individually undertake in the application form for employment visa that the FDH will reside in the employer's residence specified in the SEC.

2.2 According to "A Handbook for Employing Foreign Domestic Helpers" published by LD, the "live-in requirement" is applicable throughout the FDH's employment period in Hong Kong. Under Clause 15 of the SEC, if the employer wishes to vary Clause 3 of the SEC so that the FDH can reside in places other than the employer's residence, prior consent of the Commissioner for Labour ("the Commissioner") shall be obtained. The Commissioner will assess each case on its own merits[4].

2.3 If the employer/FDH breaches the SEC and the undertakings in the relevant application form, ImmD will consider such conduct while processing future applications from the employer for employing an FDH from abroad, or from the FDH for employment visa or extension of stay, and may refuse their applications.

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[2] The SEC is the only contract acceptable to the Government, whenever an application is made by an employer to employ a domestic helper from abroad. This contract is governed by the laws of Hong Kong, including the Employment Ordinance (Cap. 57) and the Employees' Compensation Ordinance (Cap. 282).

[3] Clause 3 of the SEC: "The Helper shall work and reside in the Employer's residence at ______."

[4] Clause 15 of the SEC: "Save for the following variations, any variation or addition to the terms of this contract (including the annexed Schedule of Accommodation and Domestic Duties) during its duration shall be void unless made with the prior consent of the Commissioner for Labour:

…

(b) a variation of the Employer's residential address stated in Clause 3 upon notification in writing being given to the Director of Immigration, provided that the Helper shall continue to work and reside in the Employer's new residential address;

…"

TWO-WEEK RULE

2.4 The Government's existing policy provides that FDHs are required to leave Hong Kong upon completion of the employment contract or within two weeks from the date of its termination, whichever is earlier ("two-week rule"). The "two-week rule" was introduced in 1987 mainly for allowing sufficient time for FDHs to prepare for their departure, and for effective immigration control. The SEC makes no provision for the FDH's accommodation in Hong Kong after the end of contract.

POTENTIAL DEMAND FOR FDH BOARDING FACILITIES

2.5 The Government's policy has already stipulated the accommodation for FDHs during the employment period, and the "two-week rule" in case of their departure from Hong Kong upon completion or premature termination of contract. Nevertheless, there are views that some FHDs may need to stay in boarding facilities in various other circumstances. Examples include:

(a) pending a change of employer in Hong Kong upon completion or premature termination of contract due to exceptional circumstances, including the pandemic; and

(b) pending criminal proceedings or settlement of labour disputes in Hong Kong.

2.6 It is unknown how many FDHs need to stay in boarding facilities under the circumstances in **paragraphs 2.5(a) and (b)**. To date, the Government has not conducted any research or statistical analysis on such potential demand.

2.7 Generally speaking, it is not unusual for FDHs to remain in Hong Kong pending a change of employer upon completion or premature termination of contract (see **para. 2.5(a)**) and stay in boarding facilities in the interim. According to ImmD's data, the numbers of applications from FDHs for visa to change the employer upon completion of contract approved by ImmD between January 2017 and August 2021 are tabulated below:

Table 1: Applications from FDHs approved by ImmD for visa to change employer upon completion of contract (January 2017 to August 2021)

Year	No. of visa applications approved for FDHs to change employer upon completion of contract
2017	22,284
2018	21,356

2019	21,600
2020	22,982
2021 (Jan to Aug)	15,131

2.8 **Table 1** shows that between 2017 and 2020, over 20,000 applications from FDHs for visa to change the employer upon completion of contract were approved annually, and the number was more than 15,000 in the first eight months of 2021. Those FDHs might return to their place of origin or remain in Hong Kong awaiting ImmD's approval of the visa application before the change of employer. In the latter case, they need to arrange their own accommodation such as guesthouses, bedspaces or FDH boarding facilities offered by EAs. FDHs awaiting approval of visa applications create potential and actual demands for accommodation at boarding facilities.

2.9 During the pandemic, to strike a balance between pandemic risks and the special work arrangements for Government employees, ImmD adopted a series of measures to expedite the approval procedures, including flexible staff deployment and more extensive use of electronic services. Where all necessary documents are received, ImmD can process an FDH's application for employment visa to change the employer within two weeks at the earliest. ImmD will review its approval procedures and make flexible arrangements when needed. Besides, local air traffic has been seriously disrupted by the pandemic, resulting in a growing demand for boarding facilities from FDHs pending a change of employer/departure from Hong Kong.

DEFINITION OF FDH BOARDING FACILITIES

2.10 Local legislation regulating labour issues or rental premises provides no definition for "FDH boarding facilities". The public generally construes it as boarding facilities for FDHs outside of their employer's residence. Such facilities come in multiple forms, operated by EAs or private property owners/organisations. They are provided at a fee or free of charge, and located in residential or commercial buildings.

2.11 Regarding such questions as the number of FDH boarding facilities in Hong Kong, the number of occupants on each premises, their locations and operators, whether they are fee-charging or not, their condition of environmental hygiene, and whether they are compliant with fire and building safety legislation, the Government has no available data, nor has it conducted any statistical analysis.

3

RELEVANT LEGISLATION AND ADMINISTRATIVE MEASURES

LEGISLATION AND ADMINISTRATIVE MEASURES REGULATING EMPLOYMENT AGENCIES (ENFORCED BY LABOUR DEPARTMENT)

3.1 The Employment Agencies Administration ("EAA") of LD is responsible for administering Part XII of the Employment Ordinance ("EO") (Cap. 57), the Employment Agency Regulations ("EAR") (Cap. 57A), and the Code of Practice for Employment Agencies ("CoP") to regulate EAs in Hong Kong. Through licensing, inspection, complaint investigation, prosecution, etc., EAA safeguards the interests of job seekers (including FDHs) and employers engaging the services of EAs in Hong Kong.

Employment Ordinance

3.2 In its long title, the EO stipulates that it is intended to provide for the protection of the wages of employees, to regulate general conditions of employment and EAs, and for matters connected therewith. Its major provisions for regulating EAs are listed below.

3.3 Section 53(1) of the EO stipulates that: "The Commissioner[5] may refuse to issue or renew a licence, or may revoke a licence, if he is satisfied on reasonable grounds—

…

(c) that the licensee or the person intending to be the licensee—

…

(iv) has contravened any provision of this Part or any regulation made under section 62;

(iva) has not complied with a code of practice issued under section 62A(1); or

(v) is not, for any other reason, a fit and proper person to operate an

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[5] According to the interpretation in section 2 of the EO, "Commissioner" means the Commissioner for Labour and includes a Deputy Commissioner for Labour and an Assistant Commissioner for Labour.

employment agency;

(d) (if the licensee or the person intending to be the licensee is a company or a partner in a partnership) that a related person[6] of the licensee or person—

…

(ii) has contravened any provision of this Part or any regulation made under section 62; or

(iii) has not complied with a code of practice issued under section 62A(1); or

(e) that an individual employed by the licensee or by the person intending to be the licensee—

(i) has contravened any provision of this Part or any regulation made under section 62; or

(ii) has not complied with a code of practice issued under section 62A(1).

…"

3.4 Section 58 of the EO stipulates that: "The Commissioner, and any public officer authorized by him in that behalf may—

(a) enter and inspect without a warrant at any reasonable time the place of business of an employment agency;

(b) require the production of, inspect, examine or take copies of any record or other document relating to an employment agency;

(c) require any person who operates, manages or assists in the management of an employment agency to furnish such information or particulars relating to the employment agency as he may specify; and

(d) make such other inquiries from any other person connected or associated with the employment agency as he thinks fit."

3.5 Section 62A(1) of the EO stipulates that: "The Commissioner may issue codes of practice setting out principles, procedures, guidelines and standards for the operation, management or control of employment agencies."

Employment Agency Regulations

3.6 The EAR provides for, *inter alia*, the application for issue or renewal of EA licences, and the maximum fees and commission which may be charged and received by EAs.

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6 According to section 50 of the EO, "related person" means—

(a) in relation to a company—a director, manager, secretary or other similar officer of the company; or

(b) in relation to a partner in a partnership—

(i) another partner in the partnership; or

(ii) another person concerned in the management of the partnership.

Code of Practice

3.7 In January 2017, LD promulgated the CoP[7] as an administrative measure for regulating EAs to promote the professionalism and service quality of the industry. The Employment (Amendment) Ordinance 2018, effective 9 February 2018, provided a legal basis for the CoP. LD also updated the CoP pursuant to section 62A(1)[8] of the EO.

3.8 The CoP highlights the salient legislative requirements that EAs must follow, and sets out the minimum standards expected of EA licensees by the Commissioner. These include maintaining transparency in business operations, drawing up written service agreements with job seekers and employers, providing payment receipts, and avoiding involvement in the financial affairs of job seekers. The measures, aimed at safeguarding the welfare of employers and job seekers (including FDHs), are particularly pertinent to EAs engaged in FDH placement service.

3.9 LD's EAA is responsible for enforcing the CoP and inspecting EAs regularly to ensure that they operate business in compliance with the CoP. If an EA is found in breach of the CoP, the Commissioner may consider revoking its licence, refusing to issue a licence or renew its licence, or issuing a warning letter to urge rectification.

3.10 Paragraph 3.7.2 of the CoP stipulates that: "Should EAs use their EA premises to provide boarding facilities or bedspaces (especially for job-seekers like FDHs who come from overseas), or provide such facilities on other non-EA premises to job-seekers, they must ensure that relevant approval(s) or licence(s) for operating the boarding facilities or bedspaces have been obtained from all relevant government authorities, and the prescribed standards in respect of building structure, fire safety as well as health and hygiene as specified in the relevant laws of Hong Kong (e.g. Buildings Ordinance (Cap. 123), Fire Services Ordinance (Cap. 95), Hotel and Guesthouse Accommodation Ordinance (Cap. 349) and Bedspace Apartments Ordinance (Cap. 447) (if applicable)) and/or any other licensing requirements as devised for such facilities are fully and satisfactorily met at all times."

Purview of Labour Department

3.11 As of June 2021, 3,335 EA licences had been issued in Hong Kong, of which 1,520 were issued to EAs engaged in FDH placement service. The list of licensed EAs with their particulars (including the year of licensing, address and contact details) is available on LD's Employment Agencies Portal[9], which is updated regularly. Moreover, a list of licensees is published in the Gazette every year.

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7 For details, please refer to the Government's press release dated 13 January 2017: https://www.info.gov.hk/gia/general/201701/13/P2017011300300.htm

8 The provision was added by the Employment (Amendment) Ordinance 2018.

9 LD's Employment Agencies Portal: https://www.eaa.labour.gov.hk/en/search.html

3.12 EAs are not required under the EO, the EAR and the CoP to provide boarding facilities for job seekers (including FDHs). If boarding facilities are provided for job seekers (including FDHs), EAs have the duty to ensure that such facilities meet the standards prescribed by relevant legislation, as required under the CoP (see **para. 3.10**). LD is not empowered by existing legislation to regulate boarding facilities for FDHs or other job seekers, whether managed by EAs or otherwise. Consequently, applicants for an EA licence are not required to declare to LD whether they provide boarding facilities for job seekers, nor has LD drawn up any policy for regulating those facilities. By the same token, LD has not established any mechanism to inspect boarding facilities managed by EAs.

3.13 LD remarked that its staff are not equipped with the technical expertise for regulating boarding facilities managed by EAs, nor have they received relevant training to verify the facilities' compliance with the standards and requirements in respect of environmental hygiene, fire and building safety.

3.14 If LD receives complaints about FDH boarding facilities, or comes across boarding facilities provided by EAs during routine inspection and suspects that such facilities are in breach of the legislation enforced by other departments, it will follow up and refer the cases for other authorities to handle under their purview. LD indicated that it can step up collaboration and information exchange with other departments, including designating a contact point for other departments' officers to obtain details about FDH boarding facilities managed by EAs. Also, upon receiving complaints or detecting suspected illegal operation of FDH boarding facilities at relevant premises, LD may share information with or refer the cases to other departments through the contact point.

LEGISLATION REGULATING SHORT-TERM RENTAL PREMISES (ENFORCED BY HOME AFFAIRS DEPARTMENT)

3.15 Depending on the actual mode of operation, provision of short-term accommodation or bedspace apartments in Hong Kong is regulated under the HAGAO or the BAO. HAD's Office of the Licensing Authority ("OLA") is responsible for administering the two ordinances, including issuing licences for hotels, guesthouses and bedspace apartments, and performing enforcement duties.

Hotel and Guesthouse Accommodation Ordinance

3.16 Pursuant to section 2A of the HAGAO, premises are a hotel or guesthouse if the premises are held out as providing sleeping accommodation to any persons presenting themselves who are willing to pay a fee for the sleeping accommodation. Any premises operated in a mode falling within the definition of "hotel or guesthouse" under the HAGAO must obtain a hotel or guesthouse licence before commencing operation. Nevertheless, as stipulated in the Hotel and Guesthouse Accommodation (Exclusion) Order (Cap. 349C), premises in which all accommodation is provided for a

minimum period of 28 continuous days for each letting are excluded from the application of the HAGAO.

Bedspace Apartments Ordinance

3.17 Pursuant to section 2 of the BAO, "bedspace apartment" means any flat in which there are 12 or more bedspaces used or intended to be used as sleeping accommodation for one person under rental agreements. Any premises operated in a mode falling within the definition of "bedspace apartment" under the BAO must obtain a bedspace apartment licence before commencing operation.

Purview of Home Affairs Department

3.18 HAD stated that the HAGAO and the BAO are mainly for regulating the building and fire safety of premises. The identity of occupants (whether they are FDHs or not) is not within the ambit of the legislation. The HAGAO and the BAO do not define or categorise "FDH boarding facilities".

3.19 According to HAD's understanding, "FDH boarding facilities" are temporary accommodation for helpers when they are not living in the residence provided by their employers. In response to complaints of FDH boarding facilities received in the past, OLA had inspected the premises concerned. OLA's findings revealed that those premises were not advertised openly, nor was there any evidence that a fee was charged on any persons presenting themselves for the sleeping accommodation. In other words, those premises were operated in a mode outside the definition of "hotel or guesthouse" under the HAGAO (see **para. 3.16**).

3.20 Besides, OLA has not found any rental agreements between the facility operators and occupants. As such, those premises also fall outside the definition of "bedspace apartment" under the BAO as cited above (see **para. 3.17**).

3.21 In 2018 and 2019, OLA received one and two complaints respectively alleging that FDHs were accommodated in certain premises (involving 12 in total). In respect of 11 premises, OLA officers did not detect any unlicensed operation of hotels/guesthouses after a number of inspections in the premises at different times. Investigation of those cases was thus closed. OLA's investigation of the remaining one premises was still in progress as of November 2021.

CONCLUDING REMARKS

3.22 As detailed in **paragraphs 3.1 to 3.21**, LD is not empowered by any provisions under the existing EO to regulate FDH boarding facilities operated by EAs. The EA sector shall exercise self-discipline to comply with the relevant clause under the CoP (i.e. EAs have the duty to ensure that their boarding facilities meet the requirements of relevant legislation) (see **paras. 3.10 and 3.12**). Meanwhile, some FDH boarding

facilities are not advertised openly, or the number of occupants is below the prescribed limit. These premises fall outside the ambit of the HAGAO and the BAO enforced by HAD (see **paras. 3.19 and 3.20**).

4

HANDLING OF COMPLAINTS AND PANDEMIC INCIDENTS OF BOARDING FACILITIES

HANDLING OF COMPLAINTS

4.1 Paragraph 3.7.2 of the CoP (see **para. 3.10**) stipulates that should EAs use their premises to provide boarding facilities or bedspaces (especially for job seekers from overseas like FDHs), or provide such facilities on other non-EA premises for job seekers, they must ensure that relevant approvals or licences for operating the boarding facilities or bedspaces have been obtained from all relevant Government authorities, and the standards prescribed by relevant legislation are fully and satisfactorily met at all times.

4.2 Upon receiving complaints about FDH boarding facilities, LD will follow up and refer the cases for other authorities to handle under their purview.

4.3 Between January 2020 and June 2021, LD's EAA received a total of six complaints about FDH boarding facilities. Upon receiving the complaints, LD immediately followed up with the relevant EAs. Where an EA was suspected of violating other statutory provisions, LD would refer the case to other authorities for further action. If an EA was confirmed to have violated relevant legislation or requirements, LD would consider issuing warnings, revoking or refusing to renew its licence. In addition to those six cases, HAD received two other reports of suspected illegal operation of FDH boarding facilities. The handling of the eight cases by LD and HAD is summarised below.

Table 2: Handling of complaints regarding FDH boarding facilities (January 2020 to June 2021)

Case	Details of complaint	Handling by LD	Handling by HAD
1.	Some premises in Cheung Hing Mansion, Mong Kok were allegedly used for illegal operation of "FDH guesthouse".	● Complaint referred from HAD's Yau Tsim Mong District Office. ● Follow-up action revealed that the boarding facilities were not operated by an EA.	● OLA received complaint referred from HAD's Yau Tsim Mong District Office that five flats in Cheung Hing Mansion were allegedly used for illegal operation of "FDH guesthouse". ● Investigation revealed that some flats were private residential properties, with **free** accommodation provided for FDHs by an EA. OLA closed its action as there was no evidence of unlicensed operation of hotel or guesthouse or bedspace apartment in those flats. ● OLA's investigation of the other flats was still in progress as of November 2021.
2.	An EA in North Point allegedly operated illegal FDH boarding facilities at its business premises.	● After taking follow-up action, it could not be confirmed that FDH boarding facilities were located at the EA premises. ● Case referred to HAD for further action.	● OLA's investigation revealed no evidence of unlicensed operation of hotel or guesthouse or bedspace apartment at the premises, and the case was closed subsequently.

Case	Details of complaint	Handling by LD	Handling by HAD
3.	An EA in Mong Kok allegedly operated illegal FDH boarding facilities at its business premises.	● After taking follow-up action, it could not be confirmed that FDH boarding facilities were located at the EA premises. ● But the EA operator admitted that it provided FDH boarding facilities at other locations. LD immediately advised the EA that all boarding facilities should be operated in compliance with relevant laws, including the HAGAO, the BAO and the Fire Services Ordinance. ● Case referred to HAD for further action.	● HAD referred the case to the Lands Department and the Buildings Department to follow up allegations about violations of the restricted use under the Deed of Mutual Covenant and unauthorised building works.
4.	A premises in Sha Tin was allegedly used for operating illegal FDH boarding facilities.	● Follow-up action revealed that no EA was involved in this case. ● Case referred to HAD for further action.	● OLA's investigation revealed **free** accommodation provided for FDHs by an EA. OLA closed the investigation as there was no evidence of unlicensed operation of hotel or guesthouse or bedspace apartment by the EA.
5.	An EA in Yau Ma Tei allegedly operated illegal FDH boarding facilities at its business premises.	● Inspection revealed that the EA provided boarding facilities at its business premises for FDH job seekers. Its	● OLA's investigation revealed no evidence of unlicensed operation of hotel or guesthouse or bedspace apartment by

Case	Details of complaint	Handling by LD	Handling by HAD
		operator also admitted that it had not obtained a relevant licence for the boarding facilities. ● LD immediately reminded the operator that EAs providing temporary accommodation for job seekers should ensure that approvals or licences had been obtained from relevant departments. ● Case referred to HAD for further action.	the EA, and the case was closed subsequently.
6.	The complainant alleged that an EA in Kwun Tong operated illegal FDH boarding facilities at its business premises, and asked which department was responsible for regulating FDH boarding facilities.	● No boarding facilities were discovered after inspection of the EA's business premises. ● Explained to the complainant that licensing issues related to hotel or guesthouse or bedspace apartment were not within LD's purview, and suggested the complainant contact HAD for enquiries.	● HAD did not receive any enquiry or complaint from the complainant.
7.	A premises in Mong Kok was allegedly used for operating illegal FDH boarding facilities.	● LD did not receive this complaint or referral.	● OLA's investigation revealed **free** accommodation provided for FDHs by an EA. OLA closed the investigation as there

Case	Details of complaint	Handling by LD	Handling by HAD
			was no evidence of unlicensed operation of hotel or guesthouse or bedspace apartment by the EA.
8.	A premises in Whampao was allegedly used for operating illegal FDH boarding facilities.	● LD did not receive this complaint or referral.	● OLA's investigation revealed that the premises was a private residential property. The case was closed as there was no evidence of unlicensed operation of hotel or guesthouse or bedspace apartment at the premises.

HANDLING OF PANDEMIC INCIDENTS

4.4 In 2020, there were confirmed COVID-19 infections of FDHs who were staying in boarding facilities. The facilities concerned were located at Cheung Hing Mansion, Mong Kok; Haven Court, Causeway Bay; Kin On Commercial Building, Sheung Wan; and Fung Nin Building, Tai Po. The handling of the four incidents by LD and HAD is summarised below.

Table 3: Handling of pandemic incidents regarding FDH boarding facilities (2020)

Incident	Location	Handling by LD	Handling by HAD
1.	Cheung Hing Mansion, Mong Kok[10]	● Complaint referred from HAD's Yau Tsim Mong District Office. ● Follow-up action revealed that the boarding facilities were not operated by an	● OLA received complaint referred from HAD's Yau Tsim Mong District Office that five flats in Cheung Hing Mansion were allegedly used for illegal operation of "FDH guesthouse".

[10] The location of this pandemic incident is the same as that of complaint case 1 in Table 2.

Incident	Location	Handling by LD	Handling by HAD
		EA.	● Investigation revealed that some flats were private residential properties, with **free** accommodation provided for FDHs by an EA. OLA closed its action as there was no evidence of unlicensed operation of hotel or guesthouse or bedspace apartment in those flats. ● OLA's investigation of the other flats was still in progress as of November 2021.
2.	Haven Court, Causeway Bay	● Follow-up action revealed that no EA was involved in this case.	● OLA's investigation preliminarily revealed that the premises was a private residential property, with no evidence of unlicensed operation of hotel or guesthouse or bedspace apartment at the premises. Investigation was still in progress as of November 2021.
3.	Kin On Commercial Building, Sheung Wan	● Follow-up action revealed that it was the business premises of an EA ("EA-A"). EA-A admitted that several FDHs with special needs were allowed to live briefly in its business premises during the pandemic. ● LD issued a verbal	● HAD did not receive any report or referral from other departments about this case. Hence, no follow-up action was taken.

Incident	Location	Handling by LD	Handling by HAD
		warning to EA-A advising it to operate business in compliance with the CoP. EA-A then suspended business temporarily. No FDH boarding facilities were discovered in LD's subsequent inspection.	
4.	Fung Nin Building, Tai Po	● Follow-up action revealed that it was the business premises of an EA ("EA-B"), which provided boarding facilities for FDHs without a valid licence from HAD. The case was referred to HAD. ● LD also found that four FDHs were living in the premises while on the job, showing EA-B's disregard for the "live-in requirement" under the SEC (see **para. 2.1**). LD considered the case to have reflected that the licensee of EA-B was not a fit and proper person to operate an EA (see **para. 3.3**). LD's inspection also revealed multiple violations of the CoP by EA-B. Taking into account all factors, LD decided to revoke EA-B's licence.	● Investigation revealed **free** accommodation provided for FDHs by an EA. OLA ceased its action as there was no evidence of unlicensed operation of hotel or guesthouse or bedspace apartment at the premises.

4.5 During the pandemic, LD not only followed up on COVID-19 infection cases of FDHs as reported by the Department of Health ("DH"), but also actively supported DH's anti-epidemic measures. In particular, LD approached EA associations to remind

the sector not to arrange for FDHs newly arriving in Hong Kong to undergo compulsory quarantine in boarding facilities operated by EAs. They should also avoid accommodating FDHs in an overcrowded environment, and take note of and adhere to the personal hygiene and social distancing guidelines issued by the Centre for Health Protection. Furthermore, in August 2020, LD arranged a round of free COVID-19 testing service for FDHs staying in EAs' boarding facilities to take the test on a voluntary basis. LD also delivered surgical face masks to EAs engaged in FDH placement for allocation to FDHs who needed to stay in boarding facilities.

5

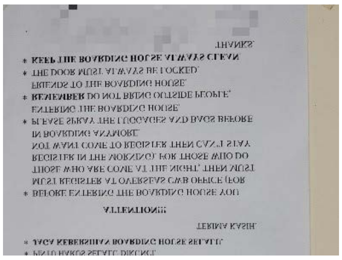
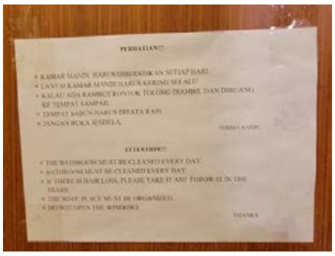
BOARDING FACILITIES OF AN EMPLOYMENT AGENCY

5.1 In September 2021, an EA operator assisted this Office to visit two of its FDH boarding facilities ("Premises A" and "Premises B"). Both premises were located in a residential building with an owners' corporation. The EA's information showed that it provided FDHs with free accommodation as well as facilities and amenities on the premises, such as cooking appliances, refrigerator, fixed-line telephone, water and electricity supply and cleaning tools. The EA operator stated that both premises were for FDHs' exclusive use. Most occupants were FDHs who remained in Hong Kong pending a change of employer upon completion or premature termination of contract, while a few had to deal with criminal proceedings or labour disputes in Hong Kong. Details of the boarding facilities are given below.

5.2 According to the EA operator, the usable floor area of Premises A was around 700 square feet. It had two bedrooms, a kitchen, a toilet, and a sitting and dining room. During our visit, around five to six FDHs were staying on the premises.

Figures 1–12: Photographs of Premises A

Photo 1: Corridor outside the premises	Photo 2: Main door	Photo 3: Table and chairs in dining area

Photo 4: Toilet and shower stall 	Photo 5: Kitchen 	Photo 6: FDHs' luggage placed in sitting room
Photo 7: Bedroom 1 with laundry drying rack 	Photo 8: Bedroom 2 	Photo 9: Sitting and dining room
Photo 10: Internal notice 	Photo 11: Internal notice 	Photo 12: Internal notice 

5.3 According to the EA operator, the usable floor area of Premises B was around 670 square feet. It had an open floor plan without separate dining and sleeping areas, and came with a kitchen and two toilets. During our visit, around five to six FDHs were staying in it.

Figures 13–24: Photographs of Premises B

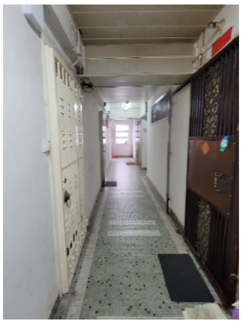
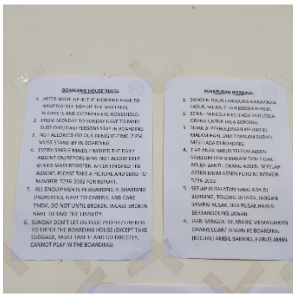
Photo 13: Corridor outside the premises 	Photo 14: Main door 	Photo 15: Kitchen
Photo 16: Open floor plan without separate dining and sleeping areas, with FDHs' luggage placed inside 	Photo 17: FDHs' clothing, and sleeping mats provided by EA 	Photo 18: Toilet and shower stall
Photo 19: Tables, chairs and a refrigerator provided by EA 	Photo 20: Internal notice 	Photo 21: Internal notice 

Photo 22: FDH register with daily records of occupants’ names and body temperatures	Photo 23: FDH register	Photo 24: FDH register

5.4 We noticed that the fixtures and fittings on the two premises were similar to those in a residential flat, with kitchen, toilet(s), and sitting and dining rooms. Furniture and electrical products such as tables and chairs, cooking appliances and refrigerator were provided. Several notices were displayed on internal walls reminding occupants to observe some housekeeping rules, including keeping clean and quiet, as well as not smoking, drinking alcohol and keeping pets. Moreover, the EA requested occupants to input their information in a register, including names, contact details and daily body temperatures.

5.5 The EA operator indicated that it would strive to improve the environment and equipment in the boarding facilities, so as to satisfy the accreditation criteria stipulated by the consulates of FDH-exportation countries[11]. For example, dining tables and chairs are provided for use by FDHs in response to the request of a consulate during its inspection of the boarding facilities.

5.6 The EA operator provided this Office with a list regarding the inspection of Premises A and Premises B by the consulate of an FDH-exportation country in February 2021. It showed that both premises were FDH boarding facilities accredited by the consulate. The inspection covered whether the living space is adequate, whether the accommodation is fee-charging, the condition of environmental hygiene and social distancing, and the availability of anti-epidemic products and equipment, such as sanitisers, surgical face masks and thermometers. Meanwhile, no similar guidelines or requirements are issued by the Hong Kong Government for FDH boarding facilities provided by EAs, and relevant departments would not inspect those premises either.

[11] Local EAs that meet the stipulated criteria are accredited or certified by the consulates of FDH-exportation countries to provide job placement services for their nationals. One of the accreditation or certification criteria is that the EA is required to provide boarding facilities in Hong Kong for FDHs from that country.

6

COMMENTS AND RECOMMENDATIONS

PREAMBLE

6.1 FDHs contribute to the economic development of Hong Kong by helping local families with household chores and care for the young and elderly, thereby unleashing the local labour force. Since FDHs are protected labour imported to Hong Kong through policy intervention, their employment rights and benefits (whether in respect of safety or welfare) should be duly safeguarded. From a practical point of view, given the vast demand for FDHs in Hong Kong, it is essential to maintain a good reputation in protecting the interests of FDHs so that Hong Kong will remain an attractive place for them. After examining the work of LD, HAD and ImmD, we have the following comments and recommendations.

(I) IMPROVING THE STANDARDS OF FDH BOARDING FACILITIES OPERATED BY EMPLOYMENT AGENCIES

Justifications

6.2 During their stay in Hong Kong, the several hundred thousand of FDHs may need accommodation out of their employer's residence in various circumstances. In particular, during the "two-week rule" period upon completion or premature termination of employment contract, some FDHs may remain in Hong Kong briefly, pending return to their place of origin or the Government's approval of visa for joining a new employer. In other words, they have a practical need to stay on such residential premises commonly known as FDH boarding facilities. The demand for FDH boarding facilities is related to the total number of FDHs imported to Hong Kong, how many of them changed employers locally, and the time taken by ImmD to process their visa applications. However, the Government has no systematic data on the demand, locations, number and facilities of those premises, nor is there any dedicated legislation for regulating FDH boarding facilities.

6.3 Amid the COVID-19 pandemic, there was extensive media coverage on local infection cases of FDHs, revealing an array of problems about their boarding facilities. Specifically, some premises were overcrowded with poor hygiene, which reflected inadequacies in the Government's current regulation. While the community's concern about FDH boarding facilities is not as intense as earlier, the Government can hardly ensure the standards of these premises in the absence of improvement measures. The situation is indeed unsatisfactory from the perspective of protecting the interests of FDHs.

6.4 Our investigation has revealed that upon receiving complaints about FDH boarding facilities in the past, LD often referred them to HAD (see **Chapter 4**) for handling under the HAGAO or the BAO. In our view, if the FDH boarding facilities are operated in the same mode as guesthouses or bedspace apartments, HAD is duty bound to follow up pursuant to the two ordinances. However, according to our understanding, EAs operate FDH boarding facilities in multiple modes. Notably, many boarding facilities operated by EAs are for FDHs' exclusive use and are therefore not advertised openly. Meanwhile, some of them are free of charge. Those boarding facilities thus fall outside the ambit of the HAGAO or the BAO. Referrals to HAD for follow-up action under the above legislation alone are clearly inadequate in regulating FDH boarding facilities. As a matter of fact, past cases (see **Chapter 4**) show that some FDH boarding facilities are not within the ambit of the HAGAO and the BAO.

6.5 Currently, the consulates of certain FDH-exportation countries have introduced an accreditation system for local EAs, authorising them to provide job placement services for their nationals (see **note 11**). While the measure can help ensure the basic standards of FDH boarding facilities operated by accredited EAs, the accreditation systems of consulates are not mandatory under any local legislation. Setting requirements for FDH boarding facilities by consulates alone may not be sufficient to address the problem, not to mention that protection of the well-being of FDHs is a duty incumbent upon the Hong Kong Government.

6.6 We appreciate that EAs perform a social function in operating boarding facilities for FDHs in need of temporary accommodation (see **paras. 2.5 and 5.1**). The quality of those boarding facilities which charge minimal or no fees at all is inevitably constrained by resources. Should the Government step up the regulation of FDH boarding facilities, there may be concerns that some EAs may have to shift the rising costs to the helpers or the employers, or even cease the boarding service, thereby rendering an undesirable outcome for all three parties concerned. Our response is that FDH boarding facilities indeed perform a social function. The purpose of regulatory measures is not to stamp out those premises, but to provide the Government with a means to ensure reasonable accommodation for FDHs employed in Hong Kong and to stipulate the standards for compliance by operators. Substandard boarding facilities for FDHs are unacceptable to society from a humanitarian point of view, while tarnishing Hong Kong's reputation at the same time. Admittedly, in devising any regulatory measures, the Government has to strike a balance in light of multiple considerations, actual circumstances, opinions of various stakeholders, etc. On the

issue of regulating FDH boarding facilities, the Government may candidly liaise with stakeholders to draw up a generally acceptable proposal for progressively improving/ enhancing the operation standards of FDH boarding facilities.

6.7 Based on the above analysis, we consider it essential for the Government to adopt measures to improve the standards of FDH boarding facilities operated by EAs. We appreciate that the Government will need to study and consider a wide range of factors related to this issue (including legal implication, impact on the manpower resources of departments and on the EA sector, etc.), and consult stakeholders. Hence, we recommend that the Government first implement administrative measures in the short and medium terms, and evaluate their effectiveness. If the result is unsatisfactory, the Government should explore the feasibility of introducing a statutory regulatory regime through legislative amendments in the long run, with a view to more stringent regulation of FDH boarding facilities operated by EAs.

Responsible Department

6.8 We consider the new improvement measures should be implemented by LD, the department responsible for labour policy and administration. First, from a legal perspective, LD is responsible for administering the EO, the EAR and the CoP. According to its long title, the EO is to regulate general conditions of employment and EAs (see **para. 3.2**). The EO stipulates how LD should regulate the operation of EAs and empowers LD to regulate by way of inspecting the place of business of an EA, inspecting and examining any record or other document relating to an EA, making inquiries from any other person connected or associated with the EA, etc. (see **para. 3.4**).

6.9 The EO also empowers LD to issue the CoP setting out principles, procedures, guidelines and standards for the operation, management or control of EAs (see **para. 3.5**). Paragraph 3.7.2 of the CoP stipulates the requirements for EAs providing boarding facilities or bedspaces for job seekers, i.e. EAs must ensure that relevant approvals or licences for operating the boarding facilities or bedspaces have been obtained from all relevant Government authorities, and the standards as prescribed by the relevant laws of Hong Kong are fully and satisfactorily met at all times (see **para. 3.10**). As seen from this and the preceding paragraphs, the EO and the CoP provide a basis for LD to take further measures towards improving the operation standards of FDH boarding facilities provided by EAs, and closing the regulatory gap existing in those premises outside the ambit of the HAGAO and the BAO but are operated by EAs.

6.10 Moreover, EAs operate FDH boarding facilities for the incentive to promote their FDH placement service. Currently, LD only regulates the job placement service of EAs, although the placement and boarding services provided for FDHs are closely related. As both services form parts of the operation and major business of EAs engaged in FDH placement, it is reasonable and synergetic for LD to regulate them together. Besides, the purpose of improving the operation of FDH boarding facilities is to protect the safety and welfare of FDHs employed in Hong Kong, thereby achieving

the ultimate policy objective of safeguarding the rights and interests of labour. Evidently, this is a labour-related issue, rather than simply about the management of premises.

6.11 As a matter of fact, past cases (see **items 3 and 4 in Table 3**) show that LD would take appropriate follow-up action where an EA was allegedly involved in illegal operation of FDH boarding facilities or violated the CoP or relevant legislation. For instance, after EA-A admitted that it had allowed FDHs to live briefly in its business premises, LD issued a verbal warning to EA-A advising it to operate business in compliance with the CoP. As regards EA-B, LD's investigation revealed that it had provided boarding facilities for FDHs on the job, showing its disregard for the "live-in requirement" under the SEC. LD considered the case to have reflected that the licensee of EA-B was not a fit and proper person to operate an EA, and its inspection also revealed multiple violations of the CoP by EA-B. Having considered all factors, LD decided to revoke EA-B's licence. As shown in these cases, it is not entirely outside the purview of LD to handle the operation of FDH boarding facilities by EAs. It follows logically that LD is the appropriate authority to take further measures to enhance their operation standards.

6.12 In sum, from the perspectives of law, policy objective and actual operation, it is rational and reasonable for LD to adopt improvement measures to enhance the quality of FDH boarding facilities operated by EAs which fall outside the ambit of the HAGAO and the BAO for protecting the well-being of FDHs employed in Hong Kong.

Short- and Medium-term Measures

6.13 Given the complexity in devising and implementing a statutory regulatory regime, we are of the view that the Government may first consider making improvements through the following administrative measures.

6.14 First, LD may liaise with stakeholders (including the EA sector, the labour sector, consulates, and relevant policy bureaux and departments) and request EAs to submit information about their FDH boarding facilities, thereby creating a database of FDH boarding facilities operated by EAs, covering such details as their number, locations, fees and any licences issued by HAD. The database will enable LD to obtain systematic data on the existing FDH boarding facilities operated by EAs, providing a basis for formulating improvement measures.

6.15 Second, LD may compile and publish a list of FDH boarding facilities operated by EAs, comprising such details as the names of EAs, addresses of boarding facilities, fees and any licences issued by HAD. While the list does not imply the Government's recognition of the standards of those boarding facilities, it can enhance information transparency and facilitate informed choices of FDHs, as well as foster improvement in the sector's operation standards by market forces. To this end, it is crucial that information on the list is comprehensive and easy to understand as far as possible.

6.16 Moreover, we recommend that LD issue more guidelines to the EA sector on the operation of FDH boarding facilities. According to paragraph 3.7.2 of the existing CoP, EAs providing boarding facilities for job seekers must ensure that necessary approvals or licences have been obtained from all relevant Government authorities, and comply with relevant laws of Hong Kong. LD may add new provisions in the CoP to specify the relevant laws, standards and guidelines applicable to EAs for their reference and compliance. In addition, as the pandemic revealed that some FDH boarding facilities were overcrowded with poor hygiene, LD may consider drawing up a set of guidelines for reference by the EA sector, referencing the existing guidelines of relevant departments and the requirements of consulates on the boarding facilities of EAs accredited for FDH placement. It is up to the authorities to decide, depending on actual situations, whether the guidelines should be legally binding at the initial stage of implementation. Yet, it should at least provide guidance for improving the environmental hygiene of FDH boarding facilities.

6.17 To take a further step, LD may introduce new licensing procedures requiring an EA to undertake, in the application for new licence or licence renewal, that if boarding facilities are provided for FDHs, it will ensure compliance with relevant legislation and requirements of Government departments, including obtaining necessary licences. LD should take appropriate enforcement action under the EA licensing regime if the EA's boarding facilities are found in breach of other Government departments' requirements subsequently.

6.18 We also recommend that LD strengthen routine collaboration with stakeholder bureaux and departments for exchanging information about the operation of FDH boarding facilities, formulating regulatory measures jointly and making referrals as necessary. In our view, FDH boarding facilities operated in the same mode as "hotel or guesthouse" or "bedspace apartment" defined under the HAGAO or the BAO should continue to be regulated by HAD pursuant to the two ordinances. In this connection, HAD may consider reviewing and optimising the procedures for handling complaints about FDH boarding facilities to expedite case handling. As regards FDH boarding facilities operated by EAs that fall outside the ambit of the HAGAO or the BAO, LD can take proper action if, depending on the situations, they are in breach of the CoP and relevant legislation. Two cases (see **items 3 and 4 in Table 3**) handled by LD in the past belong to this category. Hence, LD and HAD should establish a collaboration mechanism to facilitate mutual case referrals and information sharing.

6.19 Meanwhile, although the operation of FDH boarding facilities falls outside the purview of ImmD, it has a role to play in the overall policy on importation of FDHs with the responsibility for processing their visa applications. ImmD, therefore, should refer cases to LD and HAD for handling and share information where necessary. Depending on the situation, the department may also review the procedures for processing visa applications from FDHs, and reallocate manpower to expedite the approval of new applications where necessary.

6.20 Finally, LD should step up education in urging the EA sector to actively cooperate with the Government's initiatives, and encouraging voluntary improvement of FDH boarding facilities.

Long-term Measures

6.21 We consider that LD should evaluate the effectiveness of the above short- and medium-term measures after implementation for a certain period. If the result is unsatisfactory, LD should explore the feasibility of introducing a statutory regulatory regime through legislative amendments in the long run, with a view to more stringent regulation of FDH boarding facilities operated by EAs.

6.22 Should the need to implement a statutory regulatory regime in the long run arise, LD should stipulate the operation standards for FDH boarding facilities. During the process, LD could take reference from existing regulatory regimes on the management of other premises, the standards and requirements stipulated by consulates for FDH boarding facilities of accredited EAs, and consult stakeholders including relevant authorities.

6.23 In considering whether to introduce a new regulatory regime, LD reiterated that the EO is intended to provide for the protection of the wages of employees, to regulate general conditions of employment and EAs, and for matters connected therewith. LD is not empowered by the EO to regulate boarding facilities operated by EAs (see **para. 3.12**). If a new regulatory regime is to be established, it remains to be clarified whether the EO is the suitable instrument. By way of illustration, if the boarding facilities operated by EAs are not an integral part of their business, the EO may not provide an adequate legal basis for regulating such facilities. Moreover, LD is concerned about possible loopholes to emerge upon implementation of the new regime. For instance, to evade the requirements under the new regime, EAs may arrange for unrelated persons or companies to operate the boarding facilities, or arrange to accommodate FDHs in the boarding facilities operated by other persons or organisations. We acknowledge the concerns of LD. Should the need to introduce a statutory regulatory regime by legislative amendments arise, it is incumbent upon the Government to study and consider the issue thoroughly, including how to amend existing legislation to confer adequate powers on the authorities to perform regulatory duties, and how to plug any loopholes that may emerge upon implementation. Where necessary, the Government should conduct more in-depth research in due course.

6.24 FDH boarding facilities operated in the same mode as "hotel or guesthouse" or "bedspace apartment" are already regulated under the HAGAO or the BAO. Should the need to introduce a new regulatory regime arise in the future, whether FDH boarding facilities within the ambit of the two ordinances should be excluded from the new regime is subject to the study and decision of LD jointly with HAD. Apart from these two types of FDH boarding facilities, we consider that the new regulatory regime, if needed in the future, should encompass all FDH boarding facilities operated by EAs.

6.25 We understand that a certain level of expertise is required for the regulation of boarding facilities. LD's EAA may not be adequately positioned with its existing manpower resources to implement a new regulatory regime. We believe that this can be overcome by inter-departmental collaboration or secondment of professional officers from relevant departments. According to the practice of other departments, many licensing agencies have put in place similar arrangements for their regulatory regime of premises. For instance, the Food and Environmental Hygiene Department is responsible for the licensing of food premises. Its Licensing Offices have set up routine mechanisms with the Fire Services Department ("FSD"), the Buildings Department ("BD"), the Planning Department, etc. to obtain professional advice regarding food premises licence applications. The Social Welfare Department, which is responsible for regulating residential care homes for the elderly, has posted professional officers seconded from FSD and BD in the staff establishment of its Licensing Office. Should the need to introduce a new statutory regime for regulating FDH boarding facilities arise in future, LD may take reference from the experience of other departments to make appropriate manpower arrangements, and seek additional resources from the Government where necessary. In fact, LD has long been supported by professional officers, such as medical officers, nurses and ship surveyors, seconded from other departments in performing its functions.

(II) "LIVE-IN REQUIREMENT" DURING CONTRACT PERIOD

6.26 Clause 3 of the SEC provides that during the employment period, the FDH shall work and reside in the employer's Hong Kong residence specified in the SEC. Clause 15 of the SEC stipulates that any variation to clause 3 by the employer should be made with the prior consent of the Commissioner (see **paras. 2.1–2.2**).

6.27 Our investigation reveals that some employers may request their FDHs to stay in boarding facilities operated by EAs during the contract period (see **para. 2.5**). A common scenario is that the employer's residence is not yet ready for accommodating the FDH upon their arrival in Hong Kong. Our findings show that some employers fail to comply with clause 3 of the SEC in the above scenario without the prior consent of the Commissioner as required under clause 15, and that it generally involves just one or a few days.

6.28 We consider that the "live-in requirement" under clause 3 of the SEC, aimed at protecting the welfare of FDHs in receiving free board and lodging from their employers, should be enforced stringently. We accept that some employers may be compelled to arrange temporary accommodation for FDHs via EAs, such as when their residence is not ready due to unforeseeable circumstances upon the FDHs' arrival in Hong Kong. Yet, it is a different case if employers deliberately ignore their obligation to make advance preparation for accommodating the FDHs before their arrival in Hong Kong. From the perspectives of business operation and customer service, it is understandable for EAs to provide boarding facilities for FDHs in certain situations. But if this flexibility measure is misused or even abused, it is against the original intent

of the measure and improper. As to whether the "live-in requirement" should be maintained, it is a policy issue not subject to our comments.

6.29 We recommend that LD step up publicity and education on the employers' obligation to comply with the "live-in requirement" under clause 3 of the SEC and make advance preparation for accommodating the FDHs before their arrival in Hong Kong. We also recommend that LD remind the EA sector of the "live-in requirement" under clause 3 of the SEC if engaged in FDH boarding service. LD should take appropriate follow-up action if it discovers any employers or EAs ignoring their obligation by allowing FDHs to live out of the employer's residence during the employment period.

(III) PROCESSING OF APPLICATIONS FOR EMPLOYMENT VISA

6.30 The time taken by ImmD to process applications from FDHs for employment visa affects the demand for FDH boarding facilities. We are pleased to note that during the pandemic, ImmD has implemented measures to expedite the approval procedures, including flexible staff deployment and more extensive use of electronic services (see **para. 2.9**). We recommend that ImmD continue to review and improve its measures and efficiency in processing applications for visa to change employers submitted by FDHs locally, and expedite the approval procedures as far as resources permit, thereby minimising the potential demand for FDH boarding facilities arising from their stay in Hong Kong pending visa approval.

OUR RECOMENDATIONS

6.31 This Office has made the following recommendations to LD, HAD and ImmD:

LD

(1) liaise with stakeholders and request EAs to submit information about their FDH boarding facilities (if any), thereby creating a database of FDH boarding facilities operated by EAs (see **para. 6.14**);

(2) compile and publish a list of FDH boarding facilities operated by EAs for better information transparency and facilitating informed choices of FDHs, as well as fostering improvement in the sector's operation standards by market forces (see **para. 6.15**);

(3) revise the CoP with more specific details on the relevant laws, standards and guidelines applicable to EAs engaged in FDH boarding service for their reference and compliance; in addition, consider drawing up a set of guidelines for reference by the EA sector, taking into reference the existing guidelines of relevant departments and the requirements of

consulates on the boarding facilities of EAs accredited for FDH placement (see **para. 6.16**);

(4) require an EA to undertake, in the application for new licence or licence renewal, that it will ensure compliance with relevant legislation and the requirements of Government departments if it provides boarding facilities for job seekers; and take appropriate enforcement action under the EA licensing regime if the EA's FDH boarding facilities are found in breach of other Government departments' requirements subsequently (see **para. 6.17**);

(5) step up education in urging the EA sector to actively cooperate with the Government's initiatives, and encouraging voluntary improvement of FDH boarding facilities (see **para. 6.20**);

(6) step up publicity and education on employers' obligation to comply with the "live-in requirement" under clause 3 of the SEC, remind the EA sector of the "live-in requirement" if engaged in FDH boarding service, and take appropriate follow-up action if it discovers any employers or EAs ignoring their obligation by allowing FDHs to live out of the employer's residence during the employment period (see **para. 6.29**);

(7) evaluate the effectiveness of the measures in **paragraphs 6.31(1) to (6) and (10)** after implementation for a certain period; if the result is unsatisfactory, explore the feasibility of introducing a statutory regulatory regime through legislative amendments in the long run, with a view to more stringent regulation of FDH boarding facilities operated by EAs (see **paras. 6.21–6.25**);

HAD

(8) review and optimise the procedures for handling complaints about FDH boarding facilities to expedite case handling (see **para. 6.18**);

ImmD

(9) continue to review and improve its measures and efficiency in processing applications for visa to change employers submitted by FDHs locally, and expedite the approval procedures as far as resources permit, thereby minimising the potential demand for FDH boarding facilities arising from their stay in Hong Kong pending visa approval (see **para. 6.30**); and

LD, HAD and ImmD

(10) strengthen routine collaboration between LD and stakeholder bureaux and departments for exchanging information about the operation of FDH boarding facilities, formulating regulatory measures jointly, and making referrals as necessary. HAD and ImmD should provide information and assistance as necessary (see **paras. 6.18–6.19**).

ACKNOWLEDGEMENTS

6.32 The Ombudsman thanks LD, HAD, ImmD and other respondents for their cooperation and assistance in the course of this investigation.

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